UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/997,489	12/23/97	DENNIS C	51410-P003US

TM02/0827

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EXAMINER	
MORSE, G	
ART UNIT	**PAPER NUMBER**
2167	12

DATE MAILED: 08/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

PTO-90C (Rev.11/00)

1- File Copy

Advisory Action

Application No.	Applicant(s)
08/997,489	Dennis
Examiner	**Art Unit**
Greg Morse	2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED *Jul 2, 2001* FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.

3. ☒ The proposed amendment(s) will not be entered because:

   (a) ☒ they raise new issues that would require further consideration and/or search. (See NOTE below);

   (b) ☐ they raise the issue of new matter. (See NOTE below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

   NOTE: *"centralized" application added by amendment.*

4. ☐ Applicant's reply has overcome the following rejection(s):

5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because:

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

   Claim(s) allowed: *none*

   Claim(s) objected to: _____

   Claim(s) rejected: *66, 71, 72, 75, 76, 78, 79, 83, 86, 91, 92, 94, 95, 97-100, and 106-125*

9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

11. ☒ Other: *See attached explanation with regard to some of the response.*

GREG MORSE
PRIMARY EXAMINER
ART UNIT 2167

DETAILED ACTION

1. Applicant suggests that the final rejection of 5/9/2001 is improper because the claims were not amended on the immediate previous amendment. This is not, and has not been, the standard for issuing a final rejection based on an amendment. It is irrelevant for purposes of finality of an office action when the amendment to the claims was made, so long as that amendment was subsequent to the first office action on the merits of the case.

2. Applicant has made some attempt to traverse the official notice taken by the examiner. It is proper for an examiner to make a finding of "well known" prior art if the knowledge is of such notorious character that Official Notice can be taken. Manual of Patent Examining Procedure § 706.02(a) (5th ed., Rev. 14, Nov. 1992), now in § 2144.03 (6th ed., Rev. 3, July 1997). It takes very little on the part of an applicant to traverse such a finding. Applicant need merely assert for the record that the examiner is wrong or that the applicant is not aware that the fact is well known. The examiner should then produce evidence to support the finding. Challenging the existence of well known prior art by arguing that the fact is not supported by a reference, without stating that the examiner is wrong or that applicant is without knowledge of the prior art teaching does not constitute a proper traverse. Absent this statement, Appellant does not challenge the examiner's findings based on Official Notice.

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